IN THE SENATE OF THE UNITED STATES.

JUNE 12, 1860.—Ordered to be printed.

Mr. GREEN submitted the following

REPORT.

Your committee was appointed under the following resolution:

"*Resolved*, That a select committee of five be appointed to inquire whether the sixth section of the act entitled 'An act making appropriations for the Post Office Department during the fiscal year ending the 30th of June, 1859,' has been executed by the First Comptroller of the Treasury, and whether any further legislation is necessary to carry into effect said act, and report by bill or otherwise."

The sixth section of the Post Office act, to which reference is made in the Senate's resolution, is as follows:

"SEC. 6. *And be it further enacted*, That the First Comptroller of the Treasury be, and he is hereby, required to adjust the damages due to Edward H. Carmick and Albert C. Ramsey, on account of the abrogation by the Postmaster General of their contract to carry the mail on the Vera Cruz, Acapulco, and San Francisco route, dated the 15th of February, 1853, to adjudge and award to them according to the principles of law, equity, and justice, the amount so found due. And the Secretary of the Treasury is hereby required to pay the same to said Carmick & Ramsey, out of any money in the treasury not otherwise appropriated." Approved August 18, 1856.

The foregoing section seems to be as plain, clear, and unambiguous, as it is possible for language to make it. It recognizes and establishes the following important facts:

1st. That there was a contract with Carmick & Ramsey for carrying the mail on the Vera Cruz, Acupulco, and San Francisco route, and *in that* very act, ratified and confirmed the contract.

2d. That the contract was abrogated by the Postmaster General.

3d. That damages were due to Carmick & Ramsey for the injury sustained by them, and the actual pecuniary loss inflicted on them by this abrogation.

4th. That the First Comptroller of the Treasury was appointed by Congress, by his style of office, and required, as a chancellor or judicial officer, to "adjudge and award them, according to the principles of LAW, *equity*, and *justice*, the amount found due."

5th. The Secretary of the Treasury was *required* to pay the amount of the award, when it was properly ascertained by the said First Comptroller.

This is the simple and clear analysis of the law, and its plain and unmistakable requirements and purposes, in its own language.

The first duty imposed by the resolution under which your committee is acting, and the first inquiry made by them, was to ascertain whether the sixth section of the said law had been executed, and they found that it had not, because the law cannot be executed without an assessment of damages due to the parties, which the present Comptroller has refused to do. The former First Comptroller, Mr. Whittlesey, promptly took the case up, and fully examined and considered the subject, decided some important points, and made a most elaborate and conclusive report in favor of it.

The present First Comptroller, however, in resistance to the mandates of law, and in violation of its obligations, has interposed every obstacle and impediment which his ingenuity could suggest, to prevent and defeat its proper execution. And the committee regret to say, that other officers of the government, having no official connection whatever with the subject, also interposed to prevent the law from being carried into effect according to its purpose and its terms. Their action, however, could have no legal effect, because this is a question over which they had no jurisdiction.

And although Mr. Whittlesey did not remain sufficiently long in office to assess the damages, yet he did settle the following points. He says:

"The act asserts three prominents facts, which may be arranged in the following order:

"1st. That a contract existed, of such a nature and character, as to involve the interests of Messrs Carmick & Ramsey.

"2d. That such contract was abrogated by the Postmaster General.

"3d. That by reason of such abrogation, Carmick & Ramsey sustained damages."

These important facts or points in the case, having been adjudicated and settled by Mr. Whittlesey, the proper authority to execute the law and ascertain the damages, your committee are of opinion, that his successor possessed no power to reverse that decision, but, that as far as his action went, it was conclusive and *final*, and that all the present First Comptroller had to do was to assess the damages, as the law itself required.

The law was entirely special in its character. It was not addressed to the departments, or either of them. It required of them no action, no preliminary steps, no final act, until the First Comptroller had ascertained and adjudged the damages "*according to law, equity, and justice*," and then it "*required*" only of the Secretary of the Treasury that he should pay the amount thus ascertained.

The sixth section of the post office law alluded to involved no question of construction. It was mandatory and explicit. The only previous constructive question connected with the subject, namely, as to whether there was a contract, and whether that contract had been abrogated, Congress determined and decided for itself in the act aforesaid. Congress decided that there was a contract, and that it had

been abrogated by the Postmaster General; and that the injured parties were entitled to damages; and Congress appointed the First Comptroller alone for the specific purpose to ascertain the damages, and to render his award, that the amount might be paid.

The Comptroller alone was amenable to the President and to Congress for the faithful execution of the law, and to no one else. He could not divide his responsibility; and the opinion of the Attorney General, or the opinion of any other officer of the government, even of the President himself, could not absolve the Comptroller or release him from his obligation and duty to execute the will of Congress, as expressed by the law.

In the case of R. W. Thompson, the Attorney General said, as follows: "We cannot go behind the written law itself for the purpose of ascertaining what the law is. An act of Congress examined and compared by the proper officers, approved by the President, and enrolled in the Department of State, cannot afterward be impugned by evidence to alter and contradict it. It imparts the absolute verity of a record, at least in so far that no intrinsic proof can be received to erase one thing from it or to interpolate another into it. If there be an apparent conflict between the journals and the law as finally approved and enrolled, the journals have no claim to superior authenticity.

"It certainly has happened very often, and may happen any day, that a clerk neglects to note down the result of a vote which strikes out a clause or section from a bill on its passage. On the strength of such a hiatus in the journal, who would say that the section stricken out should be considered part of the law after it is passed and enrolled? If the law is to be looked for in the journals, the President ought to examine all the journals of both Houses before he approves a bill, for they may contain evidence of provisions which are not in the bill, and which he would not approve of. But this mode of finding laws in the journals would make enactments neither approved by the Executive nor passed by the constitutional majority of two-thirds.

"This is not all. If the law may be changed by reference to the journals, any other evidence, written or parol, may be received for the same purpose.

"An act of Congress, which has gone through all the forms of the Constitution, and is authenticated according to law, may afterward be amended or marred by the testimony of any spectator who happened to be present when it passed. What is in or what is not in a statute must then be a question as open to contradictory proof on both sides as the terms of a horse trade. Not seeing any reason for resisting the will of Congress, as expressed in this law, I can only conclude by advising your literal obedience to its provisions. That course is always the safest."

And in reference to the case of Carmick & Ramsey, Mr. Whittlesey most truly and forcibly says in his report: "It is my belief that this is the first case since the existence of the government where the head of a department has interfered to arrest the execution of a law by a person *specially* appointed by Congress to carry it into effect."

Now, in considering the peculiar circumstances of this case, it becomes a matter of very grave inquiry to know how far any executive,

ministerial, or subordinate officer of the government can be permitted to go behind the law, or question the motives or action of Congress to find excuses or reasons for the non-execution of the law. If this be permitted without rebuke, it would be subversive of all law; it would in fact be an end of all government; because, if the legal agents of the government appointed to execute the laws are, in their discretion or caprice, to question their policy or wisdom, and then refuse to execute them, all the functions of lawful government must cease.

The faithful execution of the law is imposed upon all the officers of the government alike.

This duty is equally imperative upon all. From the President down to the lowest official, all are bound by this obligation. And the Constitution itself, ruling supreme over all, limiting and defining our rights, and prescribing our duties in the Federal Government, makes it the special duty of the President "to see that the laws are faithfully *executed.*"

The obligations to execute the law in question, were, if possible, the more imperative, because the law was mandatory, and directed to a particular individual to execute it.

The present First Comptroller makes a voluntary defense before any charge is made against his integrity, and intimates that the complaint against him arises only from the claimants and others in *interest.*

This statement the committee regard as deserving rebuke. It is well known by the records of Congress that others complained who have no interest or connection with the claim of Carmick & Ramsey.

The main object of the committee is to vindicate the law-making power. Congress represents the people and the States, and is justly held responsible for its action. A mere deputy to investigate a fact of damages, should not be permitted to nullify the act of Congress, whether right or wrong, nor should he be allowed to insult others by impunging their motives.

Your committee append to this report the report of Mr. Whittlesey, the report of the First Comptroller, the two opinions of Hon. Reverdy Johnson, and the opinion of the Judiciary Committee of the House.

Be it resolved, That the power devolved on, and the duty required to be performed by, the First Comptroller of the Treasury, to assess the damages due the parties under the sixth section of the act entitled "An act making appropriations for the service of the Post Office Department during the fiscal year ending the 30th of June, 1857," be, and the same are hereby, transferred to and vested in, and shall hereafter be performed by, the Register of the Treasury and Commissioner of Patents.

WASHINGTON, *June* 17, 1858.

SIR: The sixth section of the act of Congress of August 18, 1856, which directs an assessment of damages in favor of Messrs. Carmick & Ramsey, states in direct terms that they are to be assessed "*on account of the abrogation by the Postmaster General of their contract, &c.,*" and directs you "to adjudge and award to them, according to the principles of law, equity, and justice, *the amount so found due.*" Nothing could be more explicit. No language could convey the idea that the contract was abrogated, more directly.

If the law had merely directed an assessment of damages in their favor, arising out of their contract, it would have left the question to be decided whether or not the contract was abrogated. But it did not. On the contrary, it provided for damages arising out of the *abrogation of the contract.* It fixed *that* as the starting point in the investigation, as a fact found by Congress, that neither needed nor authorized any further inquiry.

There is no ambiguity in the language of this act, and therefore no reason for reference to extraneous circumstances to aid in its interpretation. It is like all other acts which direct administrative duty to be performed. It must be obeyed by the performance of the thing directed. That thing is the assessment of the damages due Carmick & Ramsey "on account of the abrogation" of their contract. Suppose, then, you should decide that there was no damages because the contract was not abrogated; is the act of Congress obeyed? Of course not; and that for the plain reason that Congress, in the act, have declared that it *was* abrogated, that there *are* damages to be assessed, and have merely confided the administrative duty of assessing them to you.

But if the terms of the act were ambiguous, so as to authorize resort to extraneous circumstances to ascertain its meaning, there is abundant evidence in the debates which took place in Congress to show that the whole proceeding there turned upon the fact of the abrogation of the contract. The act was passed in consequence of the memorial of Carmick & Ramsey, in which they set out the facts that the contract had been abrogated, and that they had been greatly injured thereby. The Postmaster General denied the fact of abrogation, and the issue thus formed was tried by Congress. It was decided in favor of Carmick & Ramsey, and the law was so drawn as to express that fact decisively. The whole debate shows this; and can it be justly pretended that, after such an issue has been formed, and thus tried and decided by Congress—having the exclusive right to decide it—the administrative officers of the government possess the power to review it? In my opinion, it cannot.

But besides the debates, there is also the most conclusive evidence of what Congress meant in the language of the report of the Post Office Committee of the Senate. There can be do dispute about either the propriety or existence of the practice of referring to congressional

reports in such cases. It was settled as a correct rule by Attorney General Wirt, in Tompkins's case, in 1843—affirmed by Attorney General Butler in Thomas's case, 1837—and has been recognized in practice ever since by all the departments of government. (See opinions Attorney General, vol. 1, p. 597, and vol. 3, p. 294.) In this case the report sets out the whole case, and the facts which go to establish the violation of the contract by the Postmaster General, and then asserts the *fact of its abrogation* in clear and unmistakable terms. And upon the conceded facts of the case, Congress could not do otherwise. If it were competent to go behind the act to argue or prove this proposition, nothing would be easier. Was the contract with Carmick & Ramsey valid and binding? Certainly it was, and Mr. Attorney General Black has so decided. It was so, because it was made under the sanction of an act of Congress; and was therefore, as Judge Black says, "binding in all its parts." One part of it was that Congress should approve it. Therefore it was a contract, to the effect that Carmick & Ramsey should have an opportunity of obtaining the congressional sanction. But how was this to be done? By the submission of it to Congress, by the Postmaster General, of course. There was no other way. And the obligation on the Postmaster General to submit it to Congress was as binding as any other part or incident of the contract. And this was substantially admitted by him when he gave the orders for the delivery of the mail to the contractors. Under these orders the contractors proceeded to make their arrangements, expended their money, and got ready to execute their contract. But did the Postmaster General perform *his* part of this contract? He did not; for he both refused and failed to submit the matter to Congress, by which he prevented them from obtaining the ratification of their contract. In this he violated the contract, most decidedly. If he did not, why is not the contract still in force? There are but two ways to get rid of a contract—by rescission and abrogation. In this case there was no rescission; therefore it was abrogated, or it would have been sent to Congress to be either affirmed or disaffirmed; and the damages to Carmick & Ramsey were occasioned by the refusal of the Postmaster General to send it to Congress for that purpose.

But he was not only bound to sent it to Congress, he was also bound to do every thing that lay in his power to induce Congress to make the appropriation, because, as Judge Black decides, the contract was a legal and valid one. He not only did not do this, but when the matter did get before Congress he used all his influence to prevent any congressional recognition of this legal contract. Thus there was a two-fold violation of it; and it was thus that Congress viewed the matter, as is clearly shown by the act itself, by the debates, and by the report of the committee.

When this act was passed all the facts were before Congress, so that they knew the relations existing between the government and the contractors. They knew that the contract contained the provision that it was to be submitted to Congress, and also that it had not been so submitted. They knew just what the Postmaster General had done, and what he had not done, and what Carmick & Ramsey had done,

and what they had not done; and they acted upon the case *just as it was*, by deciding that Carmick & Ramsey, under *just that state of facts*, were entitled to damages. They decided that, by all the circumstances thus before them, the contract was abrogated; and that Carmick & Ramsey were entitled to all damages arising therefrom, "according to the principles of law, equity, and justice." And what that damage was, and that alone, is the question submitted to you. All others are precluded.

If there could be any possible doubt that this was the effect of the law, it would be removed by supposing a transposition of its terms, so as to make it read in this way: "that the damages due to Edward H. Carmick and Albert C. Ramsey, on account of the abrogation by the Postmaster General of their contract to carry the mail on the Vera Cruz, Acapulco, and San Francisco route, dated February 15, 1853," shall be adjusted by the First Comptroller of the Treasury, who "is hereby required to adjudge and award to them, according to the principles of law, equity, and justice, the amount" of such damages "so found due," and the Secretary of the Treasury is required to pay the same, &c. Is it not perfectly obvious, if such had been the phraseology, that the only question which the Comptroller could consider and decide would be, the amount of the damages, and not the cause of the damage? And yet I think you will see, upon reflection, that there is not the slightest difference between the supposed and the actual provision.

Under this view of the case it seems to me too clear for argument that the contract was abrogated; that it has been so declared by Congress; that there is no administrative authority to go behind the act to examine or contest that fact; and that it is the duty of the First Comptroller to assess, and of the Secretary of the Treasury to pay, the damages which Carmick & Ramsey have sustained.

I have the honor to be, with regard, your obedient servant,

REVERDY JOHNSON.

Hon. W. MEDILL,
First Comptroller, &c.

WASHINGTON, *June* 18, 1858.

DEAR SIR: I beg leave to submit an argument on the construction of the spirit of the act of August 18, 1856, for the relief of Carmick & Ramsey.

I do this because, as I understood from you the other day, no argument on the subject had been before you, at the time, except that of Mr. Attorney General Black.

Respectfully requesting as early a decision as you can conveniently make, I remain truly yours,

REVERDY JOHNSON.

GOV. MEDILL,
First Comptroller, &c.

P. S. If you desire it, I can multiply opinions from the best lawyers in and out of the Congress, concurring with my own.

R. J.

WASHINGTON, *June* 19, 1858.

SIR: I desire to make a few additional suggestions in the matter of Carmick & Ramsey's claim.

The act for their relief on the 18th of August, 1856, directed the First Comptroller to assess the damages, &c. Mr. Whittlesey then filled that office; the duty was therefore *upon him* to do what the law required. Upon such duty he entered with his accustomed promptness; and received from the claimants an account of their demand, when, very properly, he suspended action, because the then Postmaster General, Mr. Campbell, had brought the matter again before Congress in the nature of an appeal from the former decision of that body. Such appeal failing, Congress declining to repeal or modify the act of 1856, Mr. W. again considered the case. To do this properly, with justice to the United States as well as the claimants, and under a rule of his office in such cases, he caused the Postmaster General to be notified that he or his assistants might attend the examination of the testimony. Instead of doing this, that officer referred the matter to the Attorney General, and asked a further suspension, which was also properly given. When, however, the Attorney General did give his opinion and it was submitted to the Comptroller by the Secretary of the Treasury, the Comptroller at once again entered on the duty imposed by the law of 1856, and so far progressed in it as to decide, *as he had a clear right to do*, that the opinion was not binding upon him, the law devolving upon him the *exclusive jurisdiction over the subject*. In this conclusion, too, he has the express sanction of the President, in a letter on file with the papers in your possession. And having so decided in the exercise of this, his exclusive jurisdiction, he also decided three other questions:

1. That there had been a contract between the claimants and the government;

2. That such contract had been abrogated by the Postmaster General; and

3. That by reason of that abrogation, Carmick & Ramsey had sustained damage.

Having determined these three points, the Comptroller resigned, and in that condition the case came before you. Now, what I wish to suggest is, that to the extent mentioned, the case was *finally disposed of by Mr. Whittlesey and that you are bound so to consider it;* and that what makes the obligation, if possible, more obvious, is the character of the report of the Judiciary Committee of the House, at their recent session, in which they unanimously expressed the same opinion. For the rule that the decision of your predecessor is conclusive upon you, I refer to the case of the United States and the Bank of the Metropolis, (15 Peters Sup. C. Rep., 400, 401,) and to an official opinion of my own in Fisher's case, acted upon by the Secretary of the Treasury. (See Opinions of the Att'ys Gen'l, vol. 5, p. 97.)

With respect, your obedient servant,

REVERDY JOHNSON,

Governor MEDILL, *&c., &c., &c.*

Report of the Hon. Elisha Whittlesey, First Comptroller, in the case of Carmick & Ramsey.

TREASURY DEPARTMENT,
Comptroller's Office, April —, 1857.

IN THE MATTER OF THE CLAIM OF EDWARD H. CARMICK AND ALBERT C. RAMSEY.

The sixth section of an act approved on the 18th of August, 1856, entitled "An act making appropriations for the service of the Post Office Department during the fiscal year ending the thirtieth of June, eighteen hundred and fifty-seven," is as follows:

"That the First Comptroller of the Treasury be, and he is hereby, required to adjust the damages due to Edward H. Carmick and Albert C. Ramsey, on account of the abrogation by the Postmaster General of their contract to carry the mail on Vera Cruz, Acapulco, and San Francisco route, dated the fifteenth February, eighteen hundred and fifty-three; to adjudge and award to them, according to the principles of law, equity, and justice, the amount so found due; and the Secretary of the Treasury is hereby required to pay the same to the said Carmick & Ramsey out of any money in the treasury not otherwise appropriated." (Session Laws, first session Thirty-fourth Congress, page 95.)

A correspondence was carried on between this office and the said Carmick & Ramsey, and others interested in the settlement, and their attorneys. A general statement of their claim was filed, a copy of which is designated A.

Having required a specific account of the damages, it was filed some time thereafter, a copy of which is designated B.

On the publication of the President's message, at the third session of the Thirty-fourth Congress, and the documents that accompanied it, it was found that the Postmaster General had presented this case to Congress, apparently for its revision. He went into an argument somewhat elaborate, the purport of which appeared to be that the subject was not understood by Congress when the law was passed requiring the Comptroller to adjust the damages Carmick & Ramsey had suffered by the abrogation of the contract, as was erroneously asserted in the act, as the Postmaster General substantially alleged; and to enable Congress to be enlightened in the matter, the better to repeal or qualify its former legislation, his report and argument were accompanied by such documents as he deemed to be necessary.

The memorial of the claimants, the report of the committee, &c., were omitted.

As the Postmaster General had thus brought the subject before Congress again, as in the nature of an appeal from its former decision, I thought it to be proper to suspend action, so far as this office was concerned, until the matter should be disposed of by Congress, or an adjournment should take place without rescinding its former proceedings in the premises.

Congress having adjourned, by its limitation, on the 3d of March, without any action on Postmaster General Campbell's appeal, and the

claimants being anxious for a decision in the case, the correspondence was renewed, and arrangements were being executed for taking the testimony. A witness came from New York with some books and papers containing entries of expenditures; but, inasmuch as witnesses were in New York whose testimony was important, it was deemed best to have all the witnesses in that city give their depositions there. In several other cases referred to, the decision of the Comptroller by Congress to adjust and settle the damages that mail contractors had sustained, by reason of the abrogation of their contracts by the Postmaster General, the Post Office Department had been represented by its agents, or persons designated for that purpose, or interrogatories and cross-interrogatories were filed. In some instances, the Solicitor of the Treasury was authorized by the Postmaster General, or by the President, to act on the behalf of the department. Not doubting the same authority had been or would be given in this case, I had several communications with him about taking testimony, that the convenience of the department and of the claimants might be consulted.

On or about the 28th day of March, Horatio King, Esq., First Assistant Postmaster General, called at the office of the First Comptroller of the Treasury, and inquired of me respecting the examination of the claim of Messrs. Carmick & Ramsey, and, in the course of the conversation, he asked what were my views of the law; whether there was a contract; and whether, if there was, it was abrogated by the Postmaster General? I replied that Congress had decided both points in the affirmative, and that it was not for me to say the decision was wrong; that I had under the law to adjust the damages, and to adjudge and award them on the principles presented in the law.

He contended to the contrary, and spoke of the hasty and irregular proceedings of Congress towards the close of the session, and said the subject was not understood. To which I replied that I thought the law was explicit, and that if its plain import could be changed for the reasons mentioned by him, they equally operated against all laws that were passed at the close of the session, which included most of the important laws; but that in this case I did not think his representation was correct, for the law was in harmony with the report of the committee, in regard to the two points mentioned.

As to my remark on the contents of the report, he said that was nothing; that it was not drawn by the committee, nor understood. Some further remarks were made, and he asked me if I would not have the opinion of the Attorney General taken. To that inquiry, I replied in the negative.

This is the substance of the conversation between us. The Attorney General, on the 30th of March, wrote a letter, which was received on the 1st of April, advising me that Messrs. Carmick & Ramsey's claim for carrying the mail from Vera Cruz to Acapulco had been referred to him by the Postmaster General, and he requested that action be suspended until he had time to examine it. He was so good as to say, if I desired it, he would hear my views with pleasure. I called before and after several times without being able to see him; but if an interview had been obtained, I should not have presented any views in the matter of the proceedings in this case.

On the 3d of April, Mr. King wrote to me that the case of Carmick & Ramsey having been submitted to the Attorney General, the Postmaster General wished the preparation of the case to be suspended until the opinion of the Attorney General was obtained. Although I considered the measure to be without a precedent, and a dangerous usurpation, I deemed it to be best, as the President had accepted my resignation, to take effect on the first of May, not to proceed to take the testimony as had previously been contemplated. It is my belief that this is the first case since the existence of this government, where the head of a department has interfered to arrest the execution of a law by a person specially appointed by Congress to carry it into effect. If the interference in this instance is legal, the head of a department may correct the proceedings of a commissioner, or a board of commissioners, appointed under treaty stipulations, or for any other purpose whatever; or he may in like manner interfere with the Court of Claims or any other court of the United States. The President of the United States has no legal right or authority to interfere with a person specially delegated by Congress to do an act, nor with an accounting officer in the discharge of his duty, neither by virtue of his office nor by the provisions of the Constitution of the United States, that requires the President to take care that the laws be faithfully executed. Congress has in some few special cases designated the President of the United States to supervise the settlement of certain claims, and in such instances he had authority to control the action of the accounting officers.

Thus, by an act approved on February 21, 1823, vol. 6, page 280, to provide for the settlement of the accounts of Daniel D. Tompkins, the accounting officers of the treasury were authorized to adjust and settle the accounts and claims of Daniel D. Tompkins, on the principle of equity and justice, subject to the revision and final decision of the President of the United States. It certainly will not be asserted by gentlemen at the heads of the departments, who are assuming power that destroys the checks wisely provided in the act of September 2, 1789, and reënacted in the act of March 3, 1817, (when the number of the accounting officers were increased by four additional auditors and a second comptroller,) that they have more power than the President; and yet Congress thought proper, in the case of Daniel D. Tompkins, to give the power to the President to revise the settlement of the accounting officers, because he did not, by virtue of his office, possess it. It will not be contended, I presume, that this interference is not within the principles that have heretofore governed the heads of the departments, because it was interposed to prevent and to arrest action, and not to affect an award that was made. By an act approved March 1, 1823, vol. —, page —, provision was made for the settlement of accounts remaining charged on the books of the Third Auditor, with public moneys advanced before July 1, 1815, and the proper accounting officers were authorized to admit credits on such evidence as would be received in courts of justice; and if a difference of opinion existed between the accounting officers, the subject was to be referred to the Secretary of War to control the action of the Second Comptroller, who revises the finding of the Third Auditor; by virtue of the

act of 3d March, 1817, there was no occasion for conferring that power again.

An act was approved on the 3d of March, 1819, directing the proper accounting officers of the Treasury Department to settle and adjust the account of Joseph Wheaton, while acting in the quartermaster's department during the late war, upon principles of equity and justice. (Vol. 6, page 232.)

Major Wheaton being dissatisfied with the decision of the accounting officers, appealed to the President, who referred the case to Attorney General Wirt. After examining the case, he said to the President, "first, it appears to me you have no power to interfere." He reviewed and commented upon the provision of the Constitution that requires the President in general terms to take care that the laws be faithfully executed. He examined the acts relating to the arrangement of business in the Treasury Department, and showed conclusively, as he thought, and most learned and wise men in the land have since thought, that neither the President nor other officer has any right to interfere with the accounting officers in any case, other than in such special cases where the power is given by an act of Congress. He refers to various statistics, and puts several cases in illustration, and says: "Thus, in every instance, the decision of the Comptroller is declared to be final, and it is manifest that the law contemplates no further examination by any officer after such decision. Were it the intention of Congress to subject these accounts to the further revision and decision of the President, that intention would have been expressed. The truth of this position is illustrated by the act of the last session to provide for the settlement of the accounts of Daniel D. Tompkins, late governor of the State of New York." Again, he says: "My opinion is that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the executive department of the government is concerned." (Farnham's edition of the opinion of Attorneys General, vol. 1, page 624.)

An account being before the Comptroller for settlement, in favor of Joshua Wingate, and the Comptroller having disallowed a credit, the claimant presented a petition to the President, and prayed him to direct the Comptroller to allow said credit. This matter was also referred to Mr. Attorney General Wirt, and he having examined the case, he says, in conclusion: "My opinion is that the President has no right to interfere in the settlement of accounts, for the reasons detailed at large in my opinion in the case of Major Wheaton, on the 20th of October last." (Same edition, page 636.)

Egbert Anderson was a contractor for supplies during the war of 1812, and in the settlement of his accounts certain items were rejected, and Mr. Anderson applied to the President for his interposition.

The case was referred to Mr. Attorney General Wirt, accompanied by a letter. Mr. Wirt, having stated the contents of the letter, says: "And you request that I will communicate to the accounting officers of the government the opinion which I may form on full consideration of the whole subject." Having referred to his opinion in the case of Major Joseph Wheaton, and reaffirmed its correctness, he remarks:

"The settlement of Mr. Anderson's accounts belongs *exclusively* to the accounting officers of the government, before whom he will be at liberty to show and use your letter. The effect of that letter is to be settled by those accounting officers. If they have any doubts on questions of law arising in the course of the settlement, they will state those doubts to the head of the department, who, if he pleases, may call for the opinion of the Attorney General. But the interference of the President in any form would, in my opinion, be illegal."

Having made some additional remarks, he said: "These are the reasons which induce me to think that neither you nor the Attorney General are called upon to say or to do anything upon this subject; that you have no manner of official connection with the settlement of these accounts; and that, so far from being called upon by your duty to interpose any directions to the accounting officers, it would be an unauthorized assumption of authority for you to interfere in the case in any manner whatever." (Same edition, page 678.)

The same principles were laid down in regard to the accounting officers and the President by Mr. Attorney General Taney, in the case of General (James, as I suppose) Taylor, (Farnham's edition, page 507,) and in the case of Mr. Hogan, (page 544.) In the case of Peebles, settled by the Third Auditor and Second Comptroller, President Jackson decided that "the decision of the Second Comptroller is final, over whose decisions the President has no power, except by removal." This decision is indorsed upon the papers in the handwriting of the President.

On the 3d of March, 1841, an act was passed directing the proper accounting officers of the Treasury Department to adjust and to settle the accounts of Clements, Bryan & Co. with the United States, upon certain principles specified. The counsel of the claimants were not satisfied with the decision of the Second Comptroller, and they asked President Tyler to instruct the accounting officers in the matter. He referred the subject to John C. Spencer, then Secretary of War. He was among the most learned of the profession of the law, and eminently qualified by his knowledge of the Constitution, the theory of the Treasury Department organization, and the practice under it from the commencement of the government, to investigate the subject, and the result was contained in a letter dated October 18, 1841, which I insert here, with the approval of President Tyler of the views of Mr. Spencer. Presidents Fillmore and Pierce entertained the same opinions.

"DEPARTMENT OF WAR, *October* 18, 1841.

SIR: The Secretary of War has considered the memorial of Richard S. Coxe, Mathew St. Clair Clark, and Corcoran & Riggs, addressed to the President, on the subject of the claims of Clements, Bryan & Co., and which Mr. Coxe has laid before the undersigned, as he states, at the request of the President. It seems that a law was passed on the 3d of March, 1841, directing 'the proper accounting officers of the Treasury Department to adjust and to settle the accounts of Clements, Bryan & Co. with the United States,' upon certain principles specified. In the settlement of these claims a difference of opinion has arisen be-

tween the Second Comptroller and the Second Auditor, which, according to law, must be determined according to the decision of the Comptroller. The claimants have appeared before him and submitted a written argument upon part of their case, and there is among the papers an elaborate opinion of the Second Comptroller, addressed to the Second Auditor, stating the grounds of his decision. The counsel for the claimants are desirous that the opinion of the Attorney General should be taken on the construction of the statute directing the payment, and of the contracts to which it relates, as well as upon certain questions of evidence. The Comptroller having no authority to require such opinion, the memorialists, it is understood, solicit the interposition of the President for that purpose, and Mr. Coxe also solicits the undersigned to exercise the authority given to him by law of requiring the opinion of the Attorney General.

"The law having given to the accounting officers of the Treasury the sole power of adjudicating upon this claim, and there being no general statute authorizing an appeal to the President or the Secretary of War, the undersigned cannot perceive any authority for either of those officers to interfere in the matter. The accounting officers of the treasury constitute a judicial tribunal empowered to adjust and to settle this claim, and to determine the controversy between the claimants and the United States; and there is no principle that would justify the interference of any other executive officer with this case, which would not be equally applicable to any litigation in the Supreme Court of the United States.

"The undersigned concurs entirely in the views and results expressed in an opinion of William Wirt, a former Attorney General, communicated to the President of the United States on the 20th of October, 1823, which is recorded in this department, and of which a copy is herewith transmitted.

"The undersigned is a firm believer in the principle which requires that, while all powers clearly granted should be faithfully executed, those which are withheld, or are doubtful, should not be assumed. The landmarks which the Constitution and laws have placed to bound and designate the distribution of powers to the several departments and officers of the government constitute, in his judgment, the most valuable and most sacred part of our institutions, and he dreads the curse denounced upon those who remove them.

"The Comptroller has not intimated to the undersigned any wish to have the opinion of the Attorney General. Upon recurring to the records of this department, instances are found in which the opinion of that officer has been required by the Secretary of War, at the request of the accounting officers who were charged with the decision of questions connected with the business of this department. The present appears to be such a case, in which it would be proper for the Comptroller to request the Secretary to procure the opinion of the Attorney General, and on such a request being made the undersigned would feel bound, by the precedents before mentioned, to comply with it, in order to afford to an officer of the government all the aid he might require in the discharge of a difficult duty. But until such

request be made the undersigned would conceive it officious in him to proffer aid that was not desired.

"The undersigned supposes the same principles applicable to the solicited interposition of the President.

"Respectfully submitted.

"JOHN C. SPENCER,
"*Secretary of War.*

"The PRESIDENT."

In regard to which President Tyler remarked: "Richard Coxe, Mathew St. Clair Clarke, and Corcoran & Riggs, who are the agents of Clements, Bryan & Co., having applied to the President for an order directing a reference of the questions raised by them before the Comptroller, to the consideration of the Attorney General, the President takes occasion to state that, with a view to the enlightenment of his own judgment, he referred the application to the Hon. J. C. Spencer, Secretary of War, for his opinion, in writing, upon the point, how far the Secretary or the President have a right to interfere, in the absence of any request made to that effect by the Comptroller, the act of the 3d March, 1841, having directed 'the proper accounting officer of the treasury to settle and adjust the accounts of Clements, Bryan & Co. with the United States, on certain principles specified.' The Secretary has accordingly furnished his views upon the question, in which the President fully concurs.

"The government under which we live was designed to be, emphatically, a government of laws. The law creates, dictates, and controls. No arbitrary power can be exercised by any; but all, from the highest to the lowest, are but its creatures and bound by its will.

"It belongs to the legislature not only to announce that will, but to direct the mode in which, and the agents by whom, it shall be carried into effect. If the agents thus selected shall fall into error, the legislature can alone correct such error.

"The President has no authority to review such decision with a view to reverse or modify it, but only so far as to possess himself of the knowledge of the *honesty* and *capacity* of the agents employed. If *incapable* or *dishonest*, the Constitution devolves upon him the duty of appointing others in their stead; but he cannot overrule their decision, and ought not to interfere in their deliberations.

"The Comptroller, in the present case, asks no aid, either from the Secretary or the President, to enable him to arrive at his conclusions. He is satisfied with those conclusions. Not having asked the aid of the law officer of the government, neither the President nor the Secretary having anything to do with the settlement which the accounting officers of the Treasury are alone directed by law to make, it would be worse than useless to evoke the opinion of that officer. The Comptroller would not even be compelled to read it, and the interference of either the President or Secretary could only be calculated to pervert his judgment or distract his deliberation.

"The principles herein set forth are intended by the President to govern in all future cases, and the Secretary of War is requested to

furnish to each of the heads of departments a copy of this paper for their instruction.

"JOHN TYLER.

"WASHINGTON, D. C., *October* 19, 1841."

The same question, in the same case, was brought to the consideration of President Polk, and in regard to it he said: "I have considered the application in the case to open the accounts of Bryant, Clements & Co., and decline to interfere, upon the ground that Congress has expressly given the authority to settle the claims to the accounting officers of the Treasury Department, and that I have no right to control those officers in the performance of their duty.

"J. K. POLK.

"AUGUST 9, 1845."

This whole subject, and the opinions of the Attorney General, is ably reviewed and commented upon by the Hon. Hiland Hall, in a paper bearing date the 10th day of February, 1851, then Second Comptroller of the Treasury. He was many years a distinguished member of Congress, and well acquainted with the organization of the Treasury Department.

I adopt his views as correct, and append said paper hereto as a part hereof.

These opinions and decisions were in cases before the accounting officers appointed in conformity to general laws, and in rank they are subordinate to the respective Secretaries in whose departments they hold offices; and even in *such* position, they are as independent of the proper Secretary, in the legal sphere of their offices as accountants of public accounts, (unless restricted by special act of Congress,) as the Secretary is independent of them. It is this well devised and wise system of checks that has preserved the departments and the accounting bureaus from the suspicion of dishonesty, fraud, or corruption.

If the President nor the heads of the departments have any right or authority to control the action or judgment of the officers who are dependent upon their pleasure and good will for their appointments and continuance in office, there cannot be any well-founded apology or excuse for interfering with "a special judicial authority"—as determined by Mr. Legare—appointed by Congress to perform a distinct act under its sole power and authority, enlarged or restricted, as Congress, in its wisdom, has or shall grant. Congress constitutes a committee to make a specific investigation—has the head of a department, whose acts have made the investigation necessary, any right to call upon the Attorney General for his opinion on any point of law involved?

If he has that right in the present case he has the same right in the case put.

I proceed to investigate the decisions in regard to such as have exercised special judicial authority by the directions of Congress.

An act approved on the 18th of January, 1837, (chapter 5, volume 5, page 142,) is "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," and having specified the cases for adjudication in the first, second, and third sections, the fourth and fifth sections are as follows:

"SEC. 4. *And be it further enacted*, That the claims provided for under this act shall be adjusted by the Third Auditor, under such rules as shall be prescribed by the Secretary of War, under the direction or with the assent of the President of the United States, as well in regard to the receipt of applications of claimants as the species and degree of evidence, the manner in which such evidence shall be taken and authenticated; which rules shall be such as, in the opinion of the President, shall be best calculated to obtain the object of this act, paying a due regard as well to the claims of individual justice as to the interests of the United States; which rules and regulations shall be published for four weeks in such newspapers in which the laws of the United States are published as the Secretary of War shall direct.

"SEC. 5. *And be it further enacted*, That in all adjudications of said Auditor upon the claims above mentioned, whether such judgment be in favor of or adverse to the claim, shall be entered in a book provided by him for that purpose and under his direction; and when such judgment shall be in favor of such claim, the claimant, or his legal representatives, shall be entitled to the amount thereof upon the production of a copy thereof, certified by said Auditor, at the treasury of the United States."

The Third Auditor having adjusted certain claims, as provided for in said act, and his award not meeting the views entertained by the claimants, or representatives, or attorneys, an application was made to the Secretary of War to have the adjustment made by the Third Auditor revised by the Second Comptroller, as in the ordinary cases of settling public accounts. Under the act of March 3, 1817, and to ascertain the opinion of the Attorney General whether the Second Comptroller had jurisdiction in the matter, Mr. Spencer, then Secretary of War, on the 5th of April, 1842, referred the subject to the Hon. H. S. Legare, then Attorney General.

His opinion is in the fourth volume of Farnham's edition, at page 16, and is as follows:

"OFFICE OF THE ATTORNEY GENERAL,
"*April* 6, 1842.

"SIR: I have had the honor to receive your letter of the 5th instant, inclosing one from the Hon. Mr. Turney, and a report of the Third Auditor to the Department of War, of May 6, 1841. You state the object of your inquiry is as follows: 'The object of this reference is to obtain your official opinion as to the jurisdiction of the Second Comptroller over the accounts and claims for horses and other property destroyed in the military service, under the act of January 31, 1837.' I think the true interpretation of the act of January 31, 1837, as to the jurisdiction of the Comptroller in the premises, is that put upon it, as it should seem, by the officer just mentioned. It appears to me that Congress have vested in the Third Auditor a special judicial authority *quo ad hoc*, and that his judgment is to be final.

"I have the honor to be, sir, your obedient servant,
"H. S. LEGARE.

"Hon. JOHN C. SPENCER,
"*Secretary of War.*"

John S. Gallaher, Third Auditor, having decided not to allow certan claims to Theodore Lewis, under said act of January 18, 1837, the papers were called for by the Hon. C. M. Conrad, Secretary of War, and, on consideration of the facts, he allowed to the claimant, on July 26, 1852, the sum of two hundred dollars, and on the 30th of the same month he sent for the papers again, and, with other remarks, indorsed thereon as follows:

"It appears to me very evident that the settlement of all claims under this act is vested exclusively in the Auditor, and that the Secretary of War has no authority whatever in relation to them. The above opinion, therefore, should be considered as not having been given.

"C. M. CONRAD,
"*Secretary of War.*"

Filed in the Third Auditor's office.

Mr. Conrad refers to the act of March 3, 1849, as having a bearing on the question. It will be seen, however, on examining the provisions of that act, it only gives instruction enlarging the powers of the Auditor in some particulars, and restricting them in others, and continuing former acts in force for two years. The decision of the Auditor was based on the special powers conferred by the act of March 3, 1837, continued for two years by the act of March 3, 1849.

The Third Auditor possessing the sole power to adjust and settle this class of cases under the special authority of Congress, in order to give effect to his award, he reports it to the First Auditor, who takes it as the basis of an account, and reports thereon to the First Comptroller, who, having concurred with the First Auditor, he passes the account to the Register, who certifies it to the Secretary of the Treasury. The proceedings are the same as on an act of Congress in which a certain definite sum of money is directed to be paid to a claimant by the Secretary of the Treasury.

The Third Auditor has made thousands of awards under the various acts authorizing compensation for property lost or destroyed.

The first act was approved April 9, 1816, (vol. 3, page 251.) A commissioner was created by, and appointed under, said act to carry its provisions into effect. His powers were unlimited in the amount he might award, and his finding was in the form of a judgment, and the amount, whatever it might be, was to be paid from the treasury without the revision of any other officer. The President was authorized to prescribe rules and regulations for his government. Richard Bland Lee was appointed commissioner. Mr. Madison, then President, thought that the commissioner gave too liberal construction to the act, and he communicated his views to that effect to Congress; and on the 3d of March, 1817, an act was approved amendatory of the act of April 9, 1816, and by the fifth section power was given to the Secretary of War to revise all awards of the commissioner, allowing two hundred dollars or more. (Vol. 3, page 397.)

All the cases to be examined by the commissioner were in some way connected with the military service of the country, and yet the Secretary of War had no more power before the act of March 3, 1817, was passed to interfere with the commissioner, than he had to interfere

with President Madison or with Chief Justice Marshall. By an act approved on the 20th of April, 1818, all the claims before the commissioner, and not finally acted upon, were transferred to the office of the Third Auditor. He was clothed with the same powers that had been delegated to the commissioner, and no administration or member thereof has presumed to control his decisions, nor to interfere with him, nor to instruct him in the law, nor to ask the Attorney General to do it, with success. The power vested in the First Comptroller of the Treasury in the case of Carmick & Ramsey is as full and ample as has been delegated to any officer or person under the government. It was not by my own procurement or solicitation. The business in this office is so great that the head of it should not be called to transact anything else. I have uniformly remonstrated against burdening the office with these special cases. I will not deny I have felt flattered by the confidence reposed in me by Congress, and I have discharged the trust with all the talent and industry I could command.

The cases I have thus been required to examine have arisen from the acts of the Postmasters General, and when, in office, I have been brought in collision with the head of that department, which has been exceedingly unpleasant, I have endeavored to do my duty to the United States and to the claimants, fearless of place or power, and I am gratified to believe my decisions have met the approbation of Congress.

In the case of William L. Blanchard I was required to assess the damages under the instructions of the Attorney General. Such legislation would have been wholly unnecessary, if the Attorney General has the power by virtue of his office, or if he could have been called upon by the Attorney General, whose acts were the subject of investigation, to give instructions. In the case of Glover & Mather the Comptroller was restricted to two hundred thousand dollars as the maximum of the award. Believing the testimony abundantly proved the contractors had sustained damages to that amount, I awarded it; and although it did not meet the approbation of the Postmaster General on the appearance of the decision, in the Senate a resolution was passed authorizing me to act without restriction.

In the present case, if my capacity or integrity had been doubted, a removal from office was within the competency of the President, and a measure of that kind, however wounding it might have been to my feelings, would have been better for the public than to arrest the execution of a law of Congress.

On the 17th, I received a letter of that date from the Hon. Howell Cobb, Secretary of the Treasury, inclosing a copy of Mr. Attorney General Black's opinion, under date of the 7th, in regard to the law for the relief of Carmick & Ramsey, together with the copy of a letter from the Hon. Aaron V. Brown, Postmaster General, to Mr. Cobb, dated the 16th.

Copy of the letter from Mr. Cobb is designated C. Copy of the letter from Mr. Brown is designated D.

Mr. Cobb says: "I take it for granted that you will regard it as conclusive upon the questions considered and decided by the Attorney General."

Mr. Brown says: "I have informed the First Comptroller of the Treasury that, inasmuch as the case turns upon the simple question whether the contract was abrogated by the Postmaster General, which has been answered by the Attorney General in the negative, I have decided not to become a party to any investigation having for its object the adjustment of any damages in the matter."

If the opinion of the Attorney General was deemed by the Secretary of the Treasury to be conclusive on the Comptroller, he would deem it to be conclusive on him, and of course he would not issue his warrant to pay any award I might make in favor of the claimants.

A copy of the opinion of the Attorney General in this case and a copy of his opinion in the case of Richard W. Thompson are filed herewith.

If I rightly comprehend the Attorney General in the case of Richard W. Thompson, he lays down the case to be, that a statute must be construed by its words, without resorting to any evidence, proof, or circumstances.

In the case of Carmick & Ramsey, if I do not wholly misunderstand his remarks, he examined testimony to show that the contract was not abrogated by Postmaster General Campbell; nay, he must have relied very much upon the declarations of Mr. Campbell. In the case of Mr. Thompson, he places much reliance upon the fact that a session of Congress having intervened without repealing the law for his relief, on the ground of the omission of an important clause, as it was alleged, and from this circumstance he concluded that Congress considered the allegation unfounded in fact.

In the case of Carmick & Ramsey, he does not mention the appeal that Postmaster General Campbell made at the third session of the Thirty-fourth Congress from its previous decision to relieve them, and that Congress adjourned without amending the act or repealing it. If the conclusion is pertinently drawn in the case of Thompson, that the adjournment of Congress is evidence of its being satisfied with the law for his relief, I am unable to see why the same conclusion may not be drawn in the case of Carmick & Ramsey.

In the case of Daniel D. Tompkins, heretofore referred to, a question arose in the mind of the President (who was authorized in the act to revise the finding of the accounting officers) whether they could examine the report of the committee, the better to enable them to arrive at the true intent and meaning of the act. He referred the matter to Attorney General Wirt, who gave his opinion on the 7th day of March, 1823, in the affirmative, as follows: "1. That the accounting officers, in settling the accounts and claims of the Vice-President, have a right to adopt the report of the committee, as establishing the principles which are to govern them in the examination and settlement thereof; for I consider the bill which accompanied the report as a part of that report, and the passage of the bill into a law as a virtual adoption of the report, of which it was a mere consequence." (Vol. 1, Farnham's edition, page 597.)

The same doctrine was held by Mr. Attorney General Butler, in the case of Joseph Thomas, on the 23d of November, 1837. (Vol. 3, same edition, 294.)

"SIR: In answer to the question proposed to me upon the memorial of Joseph Thomas to the President, referred to me by your letter of the 22d instant, I have the honor to state that, in my opinion, the reports of the committees of the Senate and House of Representatives upon the bill for his relief, which subsequently passed into a law, and which was approved on the 2d of July, 1836, should be taken as a guide in deciding any doubts which may arise in the construction of that law.

"The bill originated in the Senate, where it was accompanied by a full report from the Committee on the Judiciary of that body, who also made a full report, after which it passed the House without amendment.

"Under these circumstances, these two reports may well be regarded as a key to the intention of the legislature; and where they concur on the propriety of any particular allowance, and the words of the law are not inconsistent with them, we may safely presume that such allowance was intended to be made."

In this case the words of the act are so clear, express, and direct, it would seem to me to be wholly unnecessary to resort to the report of the committee to ascertain what is the meaning of the act and the intention of Congress; but as doubts have been raised I shall avail myself of the doctrine held by Mr. Wirt and Mr. Butler.

The act asserts (as I hold) three prominent facts, and I shall arrange them in the following order:

1. That a contract existed, of such a nature and character as to involve the interests of Messrs. Carmick & Ramsey.

2. That such contract was abrogated by the Postmaster General.

3. That by reason of such abrogation Carmick & Ramsey sustained damages.

Being fully sustained, as I think I am, by the above opinions and decisions, in resorting to the report of the Committee on Post Roads and Post Offices in the Senate, on which the section for relief was passed, I proceed to make extensive extracts from said report. The facts are so blended as to make it difficult to separate and arrange them under the distinct heads mentioned above, but I think it will appear that they are fully maintained in the views expressed by the committee, which are sanctioned by the passage of the section. Having copied a part of the contract, the committee, commencing at page 2, said: "Not deeming it necessary to recite here the whole of said contract in terms, as exhibited in the Ex. Doc. 47, before referred to, the committee will state, in substance, that the security afforded by the contractors was commensurate to the magnitude and importance of their undertaking, exceeding, in actual responsibility, five millions of dollars. This massive security applied to the performance incident to such service, and was for the safety of the mails throughout the route.

"It will be perceived that this improved service was restricted to sixteen days' transit between New Orleans and San Francisco, on failure thereof the contractors to forfeit the pay of the trip. The consideration of $424,000 per annum embraced a service to be performed by the contractors including the great commercial termini of the route. It included also the intermediate service of delivering and receiving

regularly the mails at the minor points of San Diego and Monterey. It will not escape observation that this large service, placing the great marts of New Orleans and San Francisco within sixteen days of each other, and embracing San Diego and Monterey intermediately, must have been regarded by the Postmaster General, who secured it for the country, as a most interesting administrative achievement.

"Although the service was to begin, imperatively, when Congress should make the needful appropriation—the written obligation to take effect when that body should thus ratify—yet, as will be seen on page seven of the Ex. Doc., we find the Postmaster General giving his official orders to his postmasters at New Orleans, San Francisco, San Diego, and Monterey, to deliver the mails to the contractors 'on the Vera Cruz and Acapulco line, when said communication is open,' with corresponding official advices to Ramsey & Carmick, of the same date. This highest official testimony of his understanding of the service to be put into operation, accompanied by the concluding words of qualification—'the pay, if any, for said service, commencing only in accordance with the terms of the contract made February 15, 1853'—shows that the department expected the contractors to equip and put into operation the route at once, or as soon as practicable.

"Thus the contractors were to have the mails for transportation as soon as they should be ready and should call for them; this preparatory and experimental service to be without pay in advance of the affirmance of Congress. All this was in March, nine months in advance of the regular meeting of Congress, and yet we have already the practical orders of the Postmaster General to his official subordinates, evincing this functionary's solicitude for the final success of a great measure, and his understanding also that the contractors were to begin the preparatory service as soon as the route could be made ready for it. Thus it was their admitted privilege to begin the service at once, on the condition stated, while it was their obligation to perform it when Congress should affirm such obligation.

"The committee have now considered the orders of the Postmaster General, who made this contract, and their purport. They have now to state that these orders were rescinded by the present Postmaster General. The first overt act of hostility seems to have been preceded and succeeded by uniform symptoms of aversion to this whole undertaking. The contractors, however, after applying much forethought and energy, and encouraged by the good will and kind offices of the Mexican government and people, equipped their route by land and sea, and called repeatedly for the mails, which were now denied to them. Nor would the present Postmaster General agree to recommend this contract to the approval of Congress. Furthermore, his disparagement and denunciation of it are now to be seen in his official statements to Congress and to others. The application of his official power tended to leave the impression on Congress and on the public mind that the enterprise had failed, and that the contractors had abandoned it; instead of which, they had equipped their route and had already demonstrated that they could compass within fourteen days (instead of the sixteen days required) the great commercial cities of New Orleans and San Francisco. In brief words, the opposing

force of the Post Office Department arrested and destroyed this whole enterprise!

"Examination of the House document before referred to, and of the Postmaster General's report to Congress of December 1, 1853, fairly avouches the foregoing narrative of this subject. The credit of the contractors was quickly destroyed; their ruin was complete.

"The committee do not here pause to argue the obligation of the Postmaster General to advise Congress *fully* on this subject, and officially to commit it to the *unbiassed* arbitrament of that body, as contemplated in the contract. The Postmaster General had solemnly, and after much consideration, made this contract. The private fortunes of individuals had become involved in it. They had devoted to the subject years of toil. The contract itself was to give effect to an act of Congress. It involved a large public policy. It was now a huge administration measure. *Who*, but the postal executive, was now to advise the legislature, officially and fully, in respect to it?

"The committee wholly misconceive the order of our government and the sub-division of its cardinal functions, if the Postmaster General could evade this obligation.

"On the pages of the documents before referred to, his peculiar views of this subject will attract attention. The committee do not conceive that they trangress any rule of official courtesy when they declare that the views of that functionary subvert the very canons of organized government, and that, as referable to this contract, they are incongruous and irrelevant. This contract, he says, 'did not meet *his* approbation.' As his disapproval could not invalidate the contract, or evade its obligation, so *his* approval was not essential to its validity.

"He had but recently attained the station where he found this contract complete from the hands of his official predecessor, finished and executed, so far as the department was concerned; not, *in fieri*, to be finished by any successor. The pending duty of the Postmaster General was only to commit the subject *fairly and fully* to Congress, whose final judgment in the premises was the condition stipulated. The present Postmaster General, in other words, but to a like effect, announces that *he* 'disapproves of the principle on which the contract was made.' That, too, had been definitely adjudged by his predecessor. Not an executive successor, but Congress, was now to affirm or disaffirm that principle. The legislature, not a new executive officer, was now to determine whether it was wrong to consult their judgment in such a matter. His kindred objection, that the route was 'impracticable for mail purposes,' was already anticipated by the contrary impressions of his executive predecessor. Congress had now become the stipulated referee. Surely that body could be trusted to determine finally whether the route was or was not practicable for mail purposes, with the lights afforded by the experimental trials of it by the contractors. Without the continued countenance of the Post Office Department, and even under pressure of its opposing efforts, the contractors had carried through intelligence between San Francisco and New Orleans within fourteen days, instead of the sixteen days as stipulated.

Such facts as to what the contractors had already done on the route

were due to Congress, not to the unsupported individual opinion of Mr. Campbell. Even such opinions of his might have been deprived of their prejudicial influence, had he at the same time informed Congress, as the files of his department enabled him to inform that body, that the contractors on this route had already placed the commercial cities of San Francisco and New Orleans within fourteen days postal intelligence of each other.

"This information, thus due to Congress in December, 1853, and which it was surely the duty of the Postmaster General to communicate to them at that time, they have never yet learned, except informally from the contractors long afterwards. The printed documents further show that the Postmaster General knew, in December, 1853, and as early, indeed, as June of that year, that these contractors, and others associated with them, had expended large sums of money in the preparation of this route. Why did this branch of the subject also escape his attention, when, in December, 1853, he was reporting to Congress? The committee are of the opinion that the act of March 3, 1851, rests on a basis of enlightened public policy; that the contract under consideration, resulting from that legislation, and conditioned on the sanction of Congress, ought to have been communicated to that body, not as it was presented to them, but with *all* the material and incident information that now appears to have been in possession of the Post Office Department; that the failure so to do, added to the previous opposition of the department, overwhelmed the contractors with pecuniary disasters, and that they now have a fair and equitable demand for damages against the government.

"Would these men ever have incurred such vast and various responsibilities could they have foreseen that they were to have the hostility, and even the reproaches, instead of the friendly coöperation, of the very department with which they had contracted? Good faith in that department would probably have crowned them and their mail route with triumphant success. Bad faith was surely the source of their disasters.

"The facts of this case are few indeed, and plain as authentic documents can make them. Aside from the irrelevant matters introduced by the Post Office Department, they do not admit of misconstruction; nor do the committee conceive the principles to be applied at all doubtful. There has been obvious wrong done to the party asking relief. Congress cannot evade the obligation to accord some measure of redress.

"This obligation is enhanced, too, by the consideration that the claimants incurred overwhelming damage in a fair, arduous, and triumphant effort to perform a contract, which illustrates, as it was intended to illustrate, the enlarged public policy of the act of Congress of March 3, 1851—the policy of increased and speedier intercourse with our Pacific possessions.

"Their contract once made, they deserved to be considered the instruments of the government to give all possible effect to that policy. They were evidently so regarded by the Postmaster General, who engaged them in this most important service.

"It is not the province of this committee to censure the present

administration of the postal department that it viewed this service in a different light and with an unfriendly eye. It is not the province of this paper to censure even the fact that the department, in 1853, set at nought the act of 1851 and its policy, by striking down the very instrumentalities already selected to give it effect, and which were on the eve of that success which was to assure the appropriation by Congress as contemplated in the contract.

"The risks were enormous which were imposed on and incurred by the contractors. They were inseparable from the preparatory equipment of their route prior to an appropriation by Congress. Their readiness to incur such hazard evinced their unreserved confidence in their own enterprising ability, and equal confidence in the department to second their efforts, at least, while not itself sharing the hazard. The contractors were entitled to every good faith and every kind act of the department seconding their efforts, short of an expenditure of the public money.

"In that enterprise of the contractors which conceived and planned and obtained their overland Mexican transit, in the further daring enterprise of this vast service in advance of an appropriation, and in staking their all upon the demonstration of their route for the judgment of Congress—in all this the committee can conceive no possible reason for the apparent aversion of the department, but every natural reason to command its sympathy and coöperation.

"It is no answer to say that they incurred such hazard in expectation of final profit to themselves. That, itself, would be a fair motive, ever commendable, without which the greatest achievements in human progress might be wanting to history. In such enterprises every honest man expects to promote his own interest in some form or other; and, in this instance, the greatest possible pecuniary success of the contractors would have attested the equivalent promotion of the public policy of the act of 1851. The sequel shows that their ruin was not the only fruit of department hostility. Another result occurred far more interesting to the public at large, the frustration of the act of 1851, with its most important policy.

"Hence the committee regard the damage done to the contractors as a most unnecessary mischief.

"The hand that worked it was wielded in the name and under the auspices of the government. The government, then, is responsible, and ought to pay for it.

"The further objection of the Postmaster General that the sum of $731,000 was then already being expended for mail transport between the Atlantic and the Pacific, and that it was 'inexpedient and unjust to go into the expenditure of a still further sum of $424,000 for the service in question,' was already adjudged by his official predecessor, and contracted on to the large involvement of individual interests. It was an intrusive lecture to Congress, who were entitled to his *full facts* instead of his admonition. It was not merely an *ex parte* accusation against the official judgment and conscience of his predecessor: it was an arraignment, also, of the legislative body that had enacted the law of March 3, 1851, which the contract itself was designed and adapted to carry into effect. Had he extended his researches into the

consideration of that law, in connection with the lost Pacific and Panama contract, he might have discovered his own plain *executive obligation* to send his mails by this very condemned route, as the most economical, and (measuring distance by time) the shortest and most expeditious. It was then the *mandate* of that law that he should adopt that route, as connecting San Francisco with our southern metropolis within sixteen or fourteen days. Then, instead of adding the $424,000 to the $731,000, he might gradually have substituted the smaller for the larger cost, and saved ten days' time in postal intelligence.

"The subjoined may be stated as a fair summary of the Postmaster General's singular proceedings in the premises. In July, 1853, (page 8 of document,) he disavows the obligation of this contract, disapproves of the principle on which it was made, denounces the route as impracticable for mail purposes, and as unjust and extravagant.

"On the 3d November, 1853, (see page 13 of document.) he could not dispense with the semi-monthly mail that Ramsey & Carmick, as he said, were to furnish, as contemplated by Mr. Hubbard, thus 'recognizing' the obligation of the contractors, and of course the obligation of the contract itself.

"On the 1st December, 1853, (see page 27 of another House document, annual report to 32d Congress,) he again repudiates contractors and contract, again denounces the route, declines to give Congress the proof in his department of its facility and unequaled dispatch, takes leave of the subject by advising that body that, since the 15th June preceding, he had not heard from the parties, (the proofs various and cumulative, to be seen in Document 47, to the contrary notwithstanding,) thus fixing the impression on the legislative mind that the route and the contract were alike impracticable, and that the contractors had abandoned the enterprise.

"Thus were these contractors intercepted by the Postmaster General, and excluded from congressional hearing of the question of their appropriation. It quickly demolished all their vast and expensive arrangements; it destroyed their credit at home and in Mexico; it left vast amounts of property useless on their hands in a foreign country. They were now prostrate in ruin, wrought by the hand of the very department of government that had solemnly contracted with them.

"The papers in this case show that these parties actually expended nearly $113,000 in this business. This is not here stated as a proper measure of damages.

"It does not embrace the embarrassments and losses imposed on one of the associated companies in this enterprise, (see page 10 of the Document 47,) nor does it include the various and multiplied expenses, precedent, subsequent, and contingent, to which these claimants were and are subjected, and which, though now impossible for them to detail, may probably amount to nearly half as much more. Nor does it include the irreparable damage of five years of toil and anxiety, now rendered far worse than fruitless to the contractors. No fair judge or legislator, in any age of activity and progress, and in respect to the accumulation of incidental expenses scattered over a long line of heavy business operations, stretching far, even into a foreign land, can say

that such itemized amount of $113,000 is the proper measure of damages here. It is referred to only because it was an exact account of expenditures by an agent in Mexico, who is enabled to verify it by items.

"Numerous and various are the precedents, legislative and judicial, entitling these men to an ampler allowance on basis more equitable and determinate. * * * * * They do not now suggest a full, definite estimate, only because they wish to present such a measure of justice as will not be questioned. Relief to the parties, who have been made the victims of confidence in the justice and faith of an executive department, has already been too long delayed. As the full measure of losses incurred or profits prevented is indeterminate under the anomalous circumstances to which the parties were subjected, the committee propose an adjustment by the Comptroller of the Treasury. While in the pursuit of justice, or traveling on the road thereto, they do not think that it becomes the occasion to interpose an objection merely technical, to wit: that this contract, though complete as to the postal department, was incomplete and conditional as to Congress. Such technical objection they now discard as derogatory to the character of the government itself, and at war with the ends of justice now sought to be attained. The total breach of faith by the administrative department itself, unprovoked by any apparent public necessity, and to the frustration, as the committee think, of a valuable public policy, worked the damage to these parties, while they were doing all that was incumbent on them to do, and precluded that consideration of Congress for which they had contracted, and to which they were entitled."

The period of my service being limited to the 1st of May, and the Postmaster General having declined in his letter of the 11th, received on the 13th, to "become a party to any investigation having for its object the adjustment of any damages in the matter," and not having funds applicable to taking testimony on the part of the government, nor for employing counsel to cross-examine the witnesses that might be examined by the claimants, and not being permitted to leave the office without deranging and delaying the current business, I found it impracticable to carry into effect the intention of Congress.

I submit this statement. It is for Congress, in its wisdom, to decide whether the act for the relief of Edward H. Carmick and Albert C. Ramsey shall be executed or remain annulled.

ELISHA WHITTLESEY,
First Comptroller.

CARMICK & RAMSEY.

IN THE HOUSE OF REPRESENTATIVES, *June* 11, 1858.

Mr. BILLINGHURST, from the Committee on the Judiciary, made the following report:

The Committee on the Judiciary, to whom was referred the memorial of Edward H. Carmick and Albert C. Ramsey, respectfully ask leave to make the following report:

The sixth section of the Post Office appropriation bill, approved August 18, 1856, is as follows:

"*And be it further enacted,* That the First Comptroller of the Treasury be, and he is hereby, required to adjust the damages due to Edward H. Carmick and Albert C. Ramsey, on account of the abrogation by the Postmaster General of their contract to carry the mail on the Vera Cruz, Acapulco, and San Francisco route, dated the 15th of February, 1853, to adjudge and award to them, according to the principles of law, equity, and justice, the amount so found due. And the Secretary of the Treasury is hereby required to pay the same to said Carmick & Ramsey out of any money in the Treasury not otherwise appropriated."

The memorialists represent that this law yet remains unexecuted, although they have made repeated efforts to have it carried into effect, and they ask relief at the hands of Congress.

The foregoing law is plain and clearly expressed. If Messrs. Carmick & Ramsey can obtain no relief under this law, then no legislation can aid them. By it, Congress has already declared—

First. That a contract was entered into, February 15, 1853, with Carmick & Ramsey to carry the mail on the Vera Cruz, Acapulco, and San Francisco route.

Second. That said contract was abrogated by the Postmaster General.

Third. That damages are due Carmick & Ramsey on account of said abrogation.

Fourth. That the First Comptroller of the Treasury be, and is, required to adjust said damages, and to adjudge and award to Carmick Ramsey, according to principles of law and equity and justice, the amount he shall so find due.

Fifth. The Secretary of the Treasury is required to pay the same to Carmick & Ramsey whenever the amount shall be determined by the First Comptroller.

What more can Congress do? Can they use more pointed words of command to the Comptroller?

The memorialists represent, that in 1856 the Postmaster General succeeded in arresting the execution of the law. Your committee are slow to believe that the Comptroller, an accounting officer designated by Congress for this particular duty, should or could allow of any

interference with his duties. In the execution of this law the First Comptroller has no superior. He is independent, not only of the Postmaster General, but of the Secretary of the Treasury, and even the President himself.

For the purposes of this law he is an officer of Congress, and, *pro tanto*, independent of all executive interference. In one point of view only can the President's power be invoked. It is his duty to see that the laws are faithfully executed. If the First Comptroller has refused, or should refuse, to carry out this law, the President, knowing it, should cause him to be removed, and a person appointed who would obey the law.

Congress has taken its share of responsibility in declaring that a contract existed, was abrogated, and that damages are due. Whether it has wisely or unwisely met and discharged that responsibility is not a question that can be reviewed now by the First Comptroller, the Secretary of the Treasury, the Postmaster General, or the President. That is a closed question. The President has approved the law.

In the opinion of your committee, it is the duty of the First Comptroller to execute the existing law.

The committee ask to be discharged from the further consideration of the subject.